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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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In the Matter of:

**Grandfathered Short-Spaced
FM Stations**

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**MM Docket No. 96-120
RM-7651**

To: The Commission - Mail Stop 1170

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REPLY OF THE LIVINGSTON RADIO COMPANY TO NAB STUDY

1. The Livingston Radio Company ("Livingston") hereby submits this reply to the study submitted in this proceeding by the National Association of Broadcasters ("NAB") on October 4, 1996. Livingston is the licensee of Station WHMI-FM, Howell, Michigan. WHMI-FM is not a pre-1964 grandfathered station but is a Class A station that has been prevented from increasing its effective radiated power to the normal 6 kW maximum for its class because of short-spacing to second- and third-adjacent channel Class B stations. Livingston filed both initial and reply comments in this proceeding.

2. Livingston finds it very noteworthy that further study has resulted in a considerable turn-around in the NAB's earlier negative posture and that NAB has become much more amenable to the Commission's proposals than it was in the past. The reason undoubtedly is that NAB has finally realized that the problems this proceeding addresses, if not already widespread, are going to become widespread shortly, when FM stations that are tenants on television towers are ordered to leave to make room for digital television antennas. Now that it appears that even the largest and wealthiest radio broadcasters with the strongest signals will be adversely affected if there is no relief, everyone is sitting up and taking notice. The Commission should itself

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recognize that the problem at hand is real and requires regulatory relief of the kind proposed in this docket.^{1/}

3. It is also abundantly clear at this point that relief is needed by stations of all classes, low power (Class A) and high power (Classes B/C) alike; and relief is also needed by post-1964 grandfathered stations, such as WHMI-FM, as well as the pre-1964 stations on which the *Notice of Proposed Rule Making* was focused. None of these stations -- regardless of their class or date of origin -- caused the predicament in which they now find themselves. All are restricted by rule changes adopted after their facilities were built.^{2/} All have similar equities, and all should be afforded similar relief.

4. While the NAB's study showed a variety of receiver responses to second- and third-adjacent channel interference, it revealed few, if any, problems with better quality receivers, especially mobile receivers. The study thus underscores the fact that the existing separation requirements beyond first-adjacent channel are out of date and are no longer necessary to protect modern receivers. Receivers capable of operating without perceptible interference in an environment of relatively strong second- and third-adjacent signals are not just the most expensive high-end receivers. In fact, there is more correlation based on use -- with mobile receivers performing the best -- than based on price. A fair conclusion from the data is that when a manufacturer is concerned about potential interference -- as automobile receiver

^{1/} Livingston notes some omissions from the NAB's list of grandfathered stations. That list must not be given any official status in applying relief granted in this proceeding.

^{2/} The WHMI-FM transmitter site has not been moved one inch since 1977, almost 20 years ago, and WHMI-FM was fully spaced, with no waivers, under the rules in effect when it was built.

designers are because their equipment is used in an unknown and variable receiving environment as vehicles move about on the highway -- they can readily produce receivers with good performance characteristics.^{3/} The Commission's regulations should take advantage of improved technology and should update its rules where the result does not require the development of any new or improved techniques not already easily available.^{4/}

5. In conclusion, Livingston urges that the record in this proceeding provides a more than ample and sound basis for permitting second- and third-adjacent channel short-spaced stations to relocate their facilities and/or to operate with the full power level for their class,^{5/} at least in any situation where short-spacing occurred through no fault of the licensee, *i.e.*, it did not result from a voluntary site or other facilities change by the licensee after separation requirement that is violated went into effect, regardless of when the rule change occurred.^{6/} Such relief will enable WHMI-FM, the only station licensed to any community in Livingston County, Michigan, to reach parts of the county where its signal now suffers interference, and to deliver the signal strength needed by local residents who rely on the station's locally oriented

^{3/} Mobile receivers require special Commission attention, not only because they operate in a changing and unpredictable environment but also because the user does not have the ability to move an antenna or to make other adjustments to avoid undesired signals. But these most vulnerable receivers are the ones where no significant problems were found.

^{4/} Protection of "lowest common denominator" receivers is not warranted where the quality necessary to achieve greater spectrum efficiency does not carry a high cost to the consumer, as is the case here.

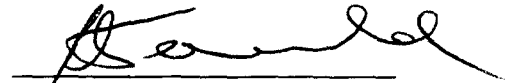
^{5/} It is critical that relief include permitting 3 kW Class A stations to increase power to 6 kW and not be limited to only transmitter site moves. Operation with full Class A facilities is one of the most important kinds of relief needed by grandfathered short-spaced stations. Not to grant such relief will significantly diminish the potential benefits from this proceeding.

^{6/} Indeed, Livingston believes that the record in this proceeding justifies relief for all second- and third-adjacent channel stations, regardless of how or when they became short-spaced.

public information services. Livingston also urges that relief be granted on a blanket basis by rule and that the Commission not adopt NAB's alternative suggestion of case-by-case review. Case-by-case review will take too much time and consume too many resources of both the Commission and private parties.

Gregory P. Jablonski, President
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Respectfully submitted,



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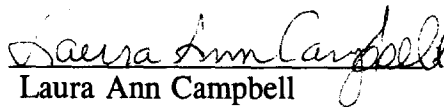
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November 4, 1996

CERTIFICATE OF SERVICE

I, Laura Ann Campbell, do hereby certify that I have, this 4th day of November, 1996, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Reply of The Livingston Radio Company to NAB Study" to the following:

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Laura Ann Campbell